

1 A Yes, I did.

2 Q And that's a standard that you
3 swore by, right?

4 A Right, but --

5 Q And that's the standard that you
6 applied, correct?

7 A This -- again, this is part of the
8 analysis. This is coming back to the question
9 of okay, is there an efficiency justification
10 or a lack thereof that overwhelms all the
11 other evidence.

12 Q Let me try it again. Is that the
13 standard that you applied? Cannot be
14 plausibly reconciled, the one that you wrote
15 about?

16 A As I described, the standard that
17 I looked to was whether Comcast within its own
18 four corners as a cable company made a
19 decision that was entirely consistent with the
20 decisions of other MVPDs and its own decision
21 when it had access to the Orioles'
22 programming.

1 Q Do you believe that to establish
2 an economic basis for discrimination claims
3 against Comcast, MASN must demonstrate
4 Comcast's decision not to carry the network on
5 the system at issue, cannot be plausibly
6 reconciled with the demand or lack thereof by
7 MASN?

8 A I include MASN's license fees and
9 alternative uses of capacity. The point is
10 and this is exactly what I just have
11 articulated. If the cost of carriage is
12 higher than the benefits that Comcast
13 perceives as a cable company, then it's an
14 entirely rational decision for Comcast to make
15 that decision.

16 And so one would have to show --
17 that MASN would have to show that the cost of
18 carriage were actually below the viewer
19 interest, the benefits that Comcast as a cable
20 company receives, in order to make a claim of
21 discrimination, so the precise standard that
22 I just laid out two minutes ago.

1 Q Do you believe that to establish
2 an economic basis for its discrimination
3 claims against Comcast, MASN must demonstrate
4 Comcast's decision not to carry the network on
5 the systems at issue cannot be plausibly
6 reconciled with the demand or lack thereof for
7 MASN by the system subscribers, MASN's license
8 fees, and alternative uses of the available
9 system capacity?

10 A I believe the statement is
11 absolutely correct.

12 Q You don't like marginalization,
13 correct?

14 JUDGE SIPPEL: The what?

15 MR. KIM: Marginalization, Your
16 Honor.

17 THE WITNESS: I don't like is a
18 term I've used. It's a fact of life when you
19 sell from one party to another and when you
20 are vertically integrated, there's an
21 elimination of double marginalization.

22 BY MR. KIM:

1 Q And just for the record, am I
2 right to think that double marginalization for
3 laymen like me means double markup?

4 A That's a layman's term version of
5 it, yes.

6 Q So it's better to mark things up
7 once from a consumer's point of view than to
8 have it marked up twice, true?

9 A Precisely.

10 Q And you think that is an economic
11 good, true?

12 A It is a benefit of -- economic
13 good, you said?

14 Q Yes.

15 A Like benefit, economic benefit, is
16 that what you mean by good?

17 Q We can go there.

18 A Okay, sure. I just want to make
19 sure we're on the same page. Yes, with the
20 elimination of double marginalization is a
21 better to consumers.

22 Q And in your judgment, Comcast

1 should be applying a double standard that
2 takes into account the net costs of the
3 programming that it owns, correct?

4 A It's not a double standard. It's
5 the same standard, but it should factor into
6 it pays less for its own programming than it
7 pays for somebody else's programming,
8 absolutely yes.

9 Q And that's something that you
10 approve of, true?

11 A Absolutely.

12 MR. KIM: May I approach, Your
13 Honor?

14 JUDGE SIPPEL: Yes.

15 BY MR. KIM:

16 Q Mr. Orszag, I'm showing you what's
17 been marked as MASN Exhibit 92 which is in
18 evidence, Your Honor.

19 Mr. Orszag, do you recognize that
20 document?

21 JUDGE SIPPEL: It's marked highly
22 confidential?

1 MR. KIM: Yes, it is, Your Honor.

2 BY MR. KIM:

3 Q Do you recognize that document,
4 Mr. Orszag?

5 A I saw it in your documents. I
6 don't think I had seen this previously.

7 Q I will represent to you, sir, that
8 this is a document that was produced to MASN
9 by Comcast. Is that fair?

10 A That is fair.

11 Q And I'm just going to ask you to
12 look at the first page and the subject line of
13 that page purports to read "CSN Philadelphia."

14 A In the box I can see CSN
15 Philadelphia.

16 Q And then you actually see a little
17 bit below that the average rate card. Do you
18 see that?

19 A Yes, I see that line.

20 Q And that number next to that is
21 [REDACTED], correct?

22 A I observe that, yes.

1 Q And then there is a box that
2 starts reading "MASN" in quotation marks rate
3 card, correct?

4 A Yes.

5 Q And it actually discounts --
6 there's a line that reads -- strike that. Let
7 me try -- start over again.

8 There's a line that reads [REDACTED]
9 [REDACTED], correct?

10 A Yes.

11 Q What is OCF?

12 A In this context, I'm not sure what
13 they're calculated --

14 Q Does that refer to operating cash
15 flow?

16 A I believe so, but again I'm not
17 precisely sure how they're calculating it and
18 that was my point.

19 Q And then you actually see on the
20 bottom line under net rate card, Comcast net
21 cost per sub. Do you see that?

22 A Yes, I do.

1 Q And that's a [REDACTED],
2 correct?

3 A I observe the [REDACTED], yes.

4 Q And so the net cost to Comcast of
5 CSN Philadelphia, given its ownership
6 interest, [REDACTED],
7 correct?

8 MR. BURKE: Objection, foundation.
9 You can answer.

10 THE WITNESS: I should answer.

11 MR. BURKE: I just don't know that
12 there's been established a basis for Mr.
13 Orszag can testifying about this document or
14 what it means.

15 MR. KIM: He's an expert. I can
16 lay tons of foundation that he's an expert.

17 JUDGE SIPPEL: It is a Comcast
18 document?

19 MR. KIM: Yes.

20 JUDGE SIPPEL: And he hasn't said
21 that he doesn't -- that he's out of his
22 territory here or anything.

1 MR. KIM: If this was a fact
2 witness, Your Honor, I'd understand the
3 objection more, but this is an expert. And he
4 relies on documents like this all the time in
5 forming his opinion.

6 JUDGE SIPPEL: That's all right.
7 No, you don't have to go any further than
8 that. Right now for the time being anyway,
9 I'm going to -- I'm not going to -- I'm going
10 to overrule the objection, but go ahead. I
11 think it's a sufficient foundation in other
12 words, go ahead.

13 BY MR. KIM:

14 Q Let me ask the question again, Mr.
15 Orszag. Isn't it true that this document
16 reflects that the net cost per sub to Comcast
17 [REDACTED] for CSN
18 Philadelphia?

19 A Well, you're reading two numbers
20 and so that according to this, I don't know --

21 JUDGE SIPPEL: Can you answer that
22 question?

1 THE WITNESS: The answer is
2 according to this, yes.

3 JUDGE SIPPEL: According to this
4 document, yes.

5 THE WITNESS: And according to
6 economic theory it would be as well.

7 JUDGE SIPPEL: All right, so then
8 what's left?

9 THE WITNESS: Whether they
10 calculated it correctly.

11 JUDGE SIPPEL: You mean whether
12 MASN is right?

13 THE WITNESS: Yes. I do not know
14 what undergirds this analysis, I do not know
15 the underlying --

16 JUDGE SIPPEL: You don't know the
17 numbers?

18 THE WITNESS: Right.

19 JUDGE SIPPEL: Okay, let's assume
20 the numbers are right and everybody does the
21 mathematics correctly.

22 THE WITNESS: [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 BY MR. KIM:

4 Q Because of Comcast's ownership
5 interest in CSN Philadelphia, correct?

6 A Precisely.

7 Q And it is your opinion, is it not,
8 sir, that this exactly the type of calculation
9 Comcast should be making in deciding which
10 program to carry?

11 A That is correct, but I don't know
12 what other parts they have of this analysis
13 here. I can't see all their assumptions.

14 Q Isn't it true that the cost of
15 programming is always going to be cheaper if
16 Comcast owns it?

17 A Yes.

18 Q For the very reason specified in
19 MASN Exhibit 92, correct?

20 A Absolutely.

21 Q And that gives Comcast a huge
22 incentive to seek its own programming, true?

1 A It depends on the cost of
2 developing the programming, but all other
3 things being equal, yes.

4 Q I appreciate the clarification.
5 So all other things being equal, Comcast
6 should always favor their affiliated
7 programming, correct?

8 A They should always take into
9 account their programming costs and the cost
10 of carriage is lower, yes.

11 Q So all other things being equal,
12 Comcast should always favor their affiliate
13 programming?

14 A That's precisely why I don't
15 believe this is the right standard to look at
16 like this.

17 Q Is the answer to my question, yes?

18 A I said yes.

19 Q Thank you. So if MASN gets
20 programming that Comcast wanted, it's your
21 opinion that Comcast should treat MASN
22 differently, correct?

1 A Should treat MASN as if it's a
2 cable-only business in making a decision of
3 how to carry it, yes.

4 Q Now Mr. Orszag, you give Comcast
5 credit for carrying MASN in certain markets,
6 true?

7 A That is correct.

8 Q Do you think it's significant that
9 in three markets Comcast recently dropped it's
10 only affiliated network CSNMA, correct?

11 A I think that is relevant, yes.

12 Q And in those markets, Comcast
13 carries CSN Philly, correct?

14 A Yes, I believe that to be the
15 case, yes.

16 Q And one of these markets is
17 Lancaster, Pennsylvania?

18 A Yes.

19 Q A second market is Dover,
20 Delaware?

21 A I believe that to be true. That's
22 in my direct testimony.

1 Q And the third market is New
2 Castle, Delaware, correct?

3 JUDGE SIPPEL: Where are you
4 looking at?

5 THE WITNESS: That sounds about
6 right.

7 JUDGE SIPPEL: Where are you
8 picking this up from?

9 MR. KIM: Page 12, Your Honor.

10 JUDGE SIPPEL: Testimony?

11 MR. KIM: Paragraph 27 of his
12 testimony.

13 THE WITNESS: About halfway
14 through paragraph 27.

15 JUDGE SIPPEL: All right.
16 Paragraph 27, right. Okay. I've got you.

17 BY MR. KIM:

18 Q So just to recap for Your Honor --

19 JUDGE SIPPEL: Please.

20 BY MR. KIM:

21 Q The three markets that you refer
22 to in your report are Lancaster, Pennsylvania;

1 Dover, Delaware; and New Castle, Delaware,
2 correct?

3 A That is correct.

4 Q And it's your opinion that because
5 Comcast carries MASN in those markets and
6 dropped CSNMA, that would not be consistent
7 with the history of discriminatory behavior
8 against MASN, true?

9 A That is not consistent with the
10 claims that MASN has put forward.

11 Q And so you think it's significant
12 that they're not discriminating against MASN
13 all the time, right?

14 A I think it's significant that they
15 have taken the steps that they took here, yes.

16 Q Is it your opinion that a boss
17 does not discriminate against women if it
18 treats some women in his office nicely?

19 A Not necessarily.

20 Q Okay, what about if he fires his
21 daughter because she only came into work once
22 a week. Does that prove that he's

1 discriminated against other women who come to
2 his office every day?

3 A No, but it's one fact you'd want
4 to consider.

5 Q But you didn't bother to figure
6 out why Comcast drops CSNMA in these markets,
7 did you?

8 A Well, they dropped it because the
9 viewer interest was not worth the price any
10 more.

11 Q Remember I asked you that question
12 at deposition?

13 A Yes, I do.

14 Q And what was your answer back
15 then?

16 A I gave a two-fold answer. My
17 recollection of it precisely was Comcast lost
18 access to certain programming in these markets
19 and as a result it dropped the programming and
20 it was my understanding that they had lost
21 access to certain programming and that as a
22 result the price didn't justify the benefits.

1 Q Wasn't your answer to that
2 question it's not an analysis you conducted?

3 A I think there's another section
4 where I'm not sure the precise question you
5 asked, but I know we had that discussion
6 because we talked about them losing access to
7 certain programming, if I recall, you may have
8 asked it in terms of quantitative analysis or
9 at least that's what I understood.

10 Q Isn't it true that there are
11 significant blackouts for professional product
12 in all three markets where Comcast drops
13 CSNMA?

14 A Precisely.

15 Q Isn't it true that in New Castle,
16 Delaware, both the Capitals and the Wizards
17 were blacked out?

18 A Right, and that's precisely why
19 the costs did not justify the benefits.

20 Q And isn't it true that after they
21 lost the Orioles, they couldn't show any
22 professional product in New Castle, Delaware?

1 A I believe that's the case, yes, in
2 New Castle.

3 Q And even after they couldn't show
4 any professional product in New Castle,
5 Delaware, they kept the channel there for
6 months and months, didn't they?

7 A I'm not sure if it was months and
8 months. I'm not sure when the per se drop
9 list sitting here today.

10 Q Actually, you are sure. Because
11 it's in your attachment.

12 A No, as I said, sitting here, we
13 can look it up if you'd like.

14 Q Let's go to MASN Exhibit 70.

15 JUDGE SIPPEL: MASN 70. Is that
16 the same thing as an attachment to his --

17 MR. KIM: It's an attachment to
18 his report, Your Honor.

19 JUDGE SIPPEL: Oh, to the report.

20 THE WITNESS: It's the one right
21 in front of you right there.

22 JUDGE SIPPEL: Right.

1 BY MR. KIM:

2 Q Isn't it true on page 2 of MASN
3 70, MASN New Castle, Delaware under CSNMA it
4 says dropped 4/1/2007?

5 A Yes, it is.

6 Q And they lost programming rights
7 to the Orioles after the 2006 season, correct?

8 A Correct.

9 Q And so that ended in September
10 2006?

11 A Yes.

12 Q So they carried a channel with no
13 professional product for months after they
14 lost the Orioles, true?

15 A It had college product which may
16 have justified the price. That's not a
17 quantitative analysis I undertook.

18 Q And so the customers there weren't
19 getting a rebate for the loss of all their
20 valuable professional product programming,
21 were they?

22 A Not for the eight months, no, but

1 then again, decisions with regard to character
2 not made on a daily or monthly basis.

3 Q Is it your testimony that if MASN
4 lost all of its professional programming,
5 Comcast would continue to pay MASN for six
6 months?

7 A There's a provision in the
8 agreement, if my recollection is correct that
9 actually govern precisely that circumstance.

10 Q And isn't that provision that the
11 agreement stated that if MASN loses
12 professional product, Comcast can terminate
13 immediately?

14 A I believe that's the case, yes.

15 Q Now you looked at other cable
16 operators in the contested regions to make
17 some conclusions that you offer an opinion on,
18 correct?

19 A That is correct.

20 Q And you know, sir, that cable
21 operators are Comcast neighbors, right?

22 A That is not 100 percent

1 necessarily because they could have overbuilt,
2 but as a general proposition, yes.

3 Q So there's a small strand of them
4 that are overbuilders, true?

5 A That is correct.

6 Q And with those overbuilders,
7 Comcast is competing tooth and nail for every
8 sub, right?

9 A That is correct.

10 Q But for most other cable
11 operators, they're not competitors, correct?

12 A For subscribers, no.

13 Q They're neighbors?

14 A They're neighbors, yes.

15 Q And you're generally friendly with
16 your neighbors, right?

17 A You're competing against very
18 similar interests. You're competing against,
19 you're both competing against DIRECTV and
20 maybe Verizon as well.

21 Q So you have similar incentives,
22 correct?

1 A You have similar incentives, yes.
2 Similar competitive pressures. You may have
3 different incentives because you have
4 different cost structure, etcetera. So I'd
5 rather say similar competitive pressures, I'm
6 sorry.

7 Q Did you hear Mr. Ortman testify?

8 A I did not hear him testify, no.

9 Q Did you understand his testimony
10 to be that a very small system in Comcast's
11 universe would be something with 2000 or fewer
12 subscribers?

13 A It wouldn't surprise me that he
14 would say that, no.

15 Q Let's look at your testimony then
16 with regard to other comparator MVPDs, and I
17 believe that's tables 1 to 3 of your written
18 direct. And let me see if I can get you the
19 page numbers. I believe it's pages 17 and 18.

20 A It is.

21 JUDGE SIPPEL: Seventeen and 18.

22 BY MR. KIM:

1 Q Mr. Orszag, how many MVPDs do you
2 include in these tables that have one thousand
3 or fewer subs?

4 A I included every MVPD in the
5 market because we're talking about small
6 markets and in this case in Region 4, it's
7 one, two, three, four, five, six.

8 Q What about the other regions?

9 A In Tri-Cities, less than a
10 thousand, looks like five, one of whom carries
11 it, I'm sorry, in Roanoke, five, one of which
12 carries it. And in Tri-Cities, it is one,
13 two, three, four, five, six, seven, eight,
14 nine, ten, eleven.

15 Q So in your tables, 21 MVPDs have
16 fewer than one thousand subs? Is that right
17 or was it 22?

18 A I don't remember precisely the
19 numbers. I can go back and --

20 Q That's all right.

21 A Twenty-one or 22, I don't think is
22 going to change the point.

1 Q Okay, and in fact, you include an
2 MVPD called Concord that has [REDACTED] expanded base
3 subscribers?

4 A That's correct. I included every
5 single one.

6 Q And you also include LNL
7 Communications that has [REDACTED] expanded base
8 subscribers, correct?

9 A That is correct.

10 Q It's your testimony, is it not,
11 sir, that the mom and pop operators reflect
12 the fact that the price of MASN is too high
13 and the interest of MASN is too low, correct?

14 A Well, remember, I focused my
15 analysis in as I said in my oral that I would
16 like to focus on the top ten because you can't
17 -- if you throw this on too few, you're going
18 to have a bias estimate, but again I should
19 note that Dr. Singer included nTelos, which
20 had [REDACTED] subscribers in his analysis. So
21 when one has so few observations one has to
22 dig a little bit deeper into the list than

1 previously.

2 My quotes that I cite were all to
3 ones that I believe had more than a thousand
4 subscribers. In my direct testimony I cite to
5 JetBroadband, Suddenlink which is one of the
6 biggest cable companies in the country.
7 Citizens Cablevision and I believe Chatmoss,
8 all of those have more than [REDACTED]
9 subscribers. Actually, all of those have more
10 than [REDACTED] subscribers.

11 Q So you're saying we should
12 disregard all the small MVPDs?

13 A No, I don't want to disregard
14 them, just as you don't want to disregard the
15 satellite providers. You want to incorporate
16 all of it into your analysis and include it,
17 but I think one wants to put more weight on
18 the bigger ones. You want to sort in --
19 that's what I've done.

20 Q Okay. So the bigger ones, just so
21 I'm clear, include Suddenlink, is that right?

22 A That is correct.